

Docket: MA9673P

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:  
Fraser et al.

U.S. Serial No: 10/783,957

Filed: February 20, 2004

For: METHODS OF USING ADIPOSE  
TISSUE-DERIVED CELLS IN THE  
TREATMENT OF CARDIOVASCULAR  
CONDITIONS

/ Group Art Unit: 1651

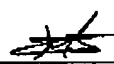
/ Examiner: Lankford Jr., Leon B.

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Mail Stop: Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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Kenton R. Mullins, Reg. No. 36,331**TRANSMITTAL**

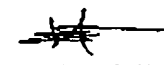
Sir:

Submitted herewith are (4 pages including this Transmittal):

- (1) Response to Restriction Requirement; and
- (2) Deposit Account Authorization: The Commissioner is hereby authorized to charge any needed fees to deposit account 50-1600.

Respectfully submitted,

August 3, 2006

  
Kenton R. Mullins  
Attorney for Applicants  
Registration No. 36,331

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/Commissioner for Patents  
P.O Box 1450  
Alexandria, VA 22313-1450RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

This submission is responsive to the Examiner's Office Action mailed July 3, 2006. That Office Action, which was issued in the form of a Restriction Requirement, requested under 35 U.S.C. 121 that Applicants elect a single disclosed cell species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

While requiring Applicants to elect a disclosed species, the Examiner did not specify the species from which Applicants should choose, stating instead that each adipose derived cell type represents a different species. Responsive to the requirement, Applicants have interpreted the species to comprise stem cells and progenitor cells. Using this interpretation, Applicants hereby elect, with traverse, stem cells as the species for prosecution on the merits.

The Office Action further held claim 1 to be generic. Applicants submit, however, that

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independent claims 30, 44, 54, 63, 70 and 77 are also generic, for at least the same reason why claim 1 was held to be generic. Moreover, it is respectfully submitted that each of the dependent claims can be construed to embrace or encompass the multiple species, so that all of the dependent claims are generic.

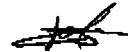
In addition to requiring Applicants to elect a disclosed cell species for prosecution on the merits, the Office Action further required Applicants to provide a listing of all claims readable thereon. Regarding this requested listing of claims, it is submitted, for context, that claims 3 and 5, for example, recite stem cells. Moreover, the Examiner's attention is directed to Applicants' specification, which describes stem cell as multipotent cells with the potential to differentiate into a variety of other cell types, which perform one or more specific functions and have the ability to self-renew, wherein some of the stem cells disclosed in the subject application may be pluripotent. The specification further describes progenitor cells as including unipotent, bipotent, or multipotent cells with the ability to differentiate into one or more cell types that perform one or more specific functions and that have limited or no ability to self-renew, wherein some of the progenitor cells disclosed in the application may be pluripotent.

All of the pending claims, including claims 4, 33, 49, 58, 65, 72 and 80 which recite adipose derived cells comprised of (and thus not limited to) progenitor cells, would appear to fall under, or be readable so as to be included by, the description of stem cells. Furthermore, claims 5, 34, 50, 59, 66, 73 and 81 would appear to be linking claims, being directed to stem cells and progenitor cells, so as to be operative to allow the inclusion of claims 4, 33, 49, 58, 65, 72 and 80 for examination in connection with the elected species of stem cells. Applicants thus respectfully submit, with traverse, that the elected species of stem cells corresponds to claims 1-84.

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Applicants respectfully submit that the application is now in condition for a first action on the merits, and request that such be done at an early date. Should the Examiner believe that a telephone conference with Applicants' representative would be helpful to advance the prosecution of the application, he is invited to contact the undersigned with any questions.

Respectfully submitted,



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